

# The Gazette of India

## EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 582] NEW DELHI, FRIDAY, DECEMBER 13, 1957/AGRAHAYANA 22, 1879

### ELECTION COMMISSION, INDIA

#### NOTIFICATION

*New Delhi, the 6th December 1957/Agrahayana 15, 1879 Saka*

S.R.O. 3984.—Whereas the election of Shri Bishan Chand Seth as a member of the House of the People from the Shahjahanpur Parliamentary constituency of that House, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Shri Darbari Lal Sharma S/o Pt. Bhup Narain, Jagatpur, Old city Bareilly;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition has, sent a copy of its order in the said election petition;

Now, therefore, the Election Commission hereby publishes the said order of the Tribunal:—

#### BEFORE THE ELECTION TRIBUNAL, SHAHJAHANPUR

PRESENT: Shri H. P. Varshni, H. J. S.—*Member.*

#### ELECTION PETITION NO. 472 OF 1957

Sri Darbari Lal Sharma, aged 50 years, son of Pt. Bhup Narain, resident of Jagatpur, Old City Bareilly.

#### *Versus*

1. Sri Bishan Chand Seth aged about 46 years, son of Lala Kali Charan. House No. 128, Muzaffarganj, Shahjahanpur.
2. Sri Narain Din Valmiki, M.P., aged about 50 years, son of not known, c/o Sri Kanhayya Lal Valmiki, M.P. No. 87 North Avenue, New Delhi.

## JUDGMENT

The Petitioner Sri Darbari Lal Sharma, a resident of Bareilly, questions the election of the Respondent No. 1 Sri Bishan Chand Seth to the Lok Sabha (House of the People) which declaration of election was made by the returning Officer on 25th March 1957. The Petitioner and the Respondent No. 1, besides others, were candidates to the General seat while the Respondent No. 2 Sri Narain Din Balmiki along with others was a candidate for the Reserved seat, from the Shahjahanpur Parliamentary double-member constituency. The Respondent No. 2 was declared elected to the Reserved seat and has been impleaded in the present petition *proforma*. The election was held on the 25th and 28th February, 1957 and on 3rd, 6th, 9th and 12th March, 1957, at the various Polling Stations in the constituency.

The Petitioner questions the election and asserted it to be void on various grounds given in paragraph 3 of the Petition alleging, *inter alia*, that systematic appeals to the electors had been made on ground of religion and community, and religious symbols had been used; that false statements had been published to prejudice the prospects of the petitioner at the election, by the Respondent No. 1, and his agents and workers; that hired and procured vehicles had been used for the conveyance of the electors; that the Respondent No. 1 had incurred expenditure in contravention of Section 77 of the R. P. Act of 1951 and had obtained the assistance from persons in the service of the Government and had offered cash to the electors and other candidates and the result of the election had been materially affected by the aforesaid and other corrupt practices. In Para 5 of the petition it was stated that the Petitioner had deposited a security of the sum of Rs. 1000 for which he enclosed a receipt.

Preliminary objections were raised on behalf of the Respondent No. 1 that particulars of corrupt practices had not been given by the petitioner and the petition was liable to be dismissed in whole or in part, and later certain amendments were prayed for by the Petitioner and some of the amendments were allowed while certain paragraphs of the Petition were deleted by orders dated 23rd August 1957 and 26th August 1957. The Respondent No. 1 filed his written statement on 25th September 1957. No written statement was filed on behalf of the Respondent No. 2.

The Respondent No. 1 denied all the allegations of corrupt practices and asserted that he was elected by an overwhelming majority of 64,230 votes in a fair and free election, having secured 168,430 votes as against 1,04,200 votes secured by the Petitioner. It was also asserted that the Petitioner had failed to comply with the mandatory provisions of Section 83 of the R.P. Act and had not given full particulars of the alleged acts of corrupt practices in the various paragraphs of the Petition or Schedules annexed thereto, and that the Petition was incompetent and liable to be dismissed, for such non-compliance. In particular it was denied that any appeals to the electors had been made in the manner alleged by the Petitioner or that false statements were published to the prejudice of the Petitioner or vehicles were hired or procured for the conveyance of electors, or that expenditure was incurred or authorised in contravention of Section 77 of R. P. Act, 1951, or that assistance of persons in the service of the Government was taken or bribes offered to electors. Paragraph 5 of the Petition relating to the security money was not admitted and it was also asserted that all the contesting candidates having not been joined as respondents to the petition, it was liable to be dismissed under section 90 clause (3) of the Representation of People Act.

The following issues were framed on 28th September 1957.

### ISSUES

1. (a) Does the Petition fail to comply with the mandatory provisions contained in Section 83 of the R. P. Act? If so, its effect?

(b) Is the Petition or any part of it barred by time in view of the amendments made on 26th August 1957?

2. (a) Was there a systematic appeal to electors of Hindu community by Respondent No. 1, and his agents and other persons on his behalf and with his consent, to vote for him on ground of religion and community and did the Respondent No. 1 make use of and appealed to religious symbols, as alleged in Para 3(i) and particulars given in Schedule 1 of the Petition?

(b) Do the alleged facts amount to corrupt practices as laid down in Section 123 (3) of the R.P. Act, and has the result of election been materially affected by the alleged voting and refraining from voting?

3. (a) Did the Respondent No. 1, his workers and agents with his consent publish statements in relation to his candidature which were false as alleged in para 3(ii) and Schedule 2 of the Petition?

(b) Do the alleged facts constitute corrupt practices as laid down in Sec. 123(4) of the R. P. Act, and did they actually result in a large number of electors being misled and in not voting for the Petitioner?

4. Did the Respondent No. 1 and his agents with his consent hire and procure vehicles for the conveyance of the electors to the Polling Stations and back as alleged in Para 3(iii) of the Petition and details given in Schedule 3 of the List of Particulars, and thereby committed the corrupt practice as laid down in Section 123 (5) of the R. P. Act?

5. (a) Did the Respondent No. 1, his agents or workers with his consent, ask the electors to cast one vote only and to give that vote to Respondent No. 1 as alleged in Para 3(v) of the petition and the particulars given in Schedule 5?

(b) Did a large number of electors thereby fail to exercise their electoral right and a large number of votes were cancelled? Do the alleged facts amount to the corrupt practice of undue influence as laid down in Section 123(2) of the R. P. Act?

6. Did the Respondent No. 1 incur or authorise expenditure in contravention of Section 77 of the R. P. Act, 1951 as alleged in Para 3(vi) of the petition and details given in Schedule 6 and thus committed the corrupt practices u/s 123 (5) of the R. P. Act?

7. Did the Respondent No. 1 through himself or through his agents and workers obtain assistance from persons in the service of the Government as alleged in Para 3(vii) of the Petition and details given in Schedule 7 of the list of particulars and thereby committed the corrupt practices u/s 123(7) of the R. P. Act?

8. (a) Did the Respondent No. 1, his agents and other workers with his consent offer cash to the electors and Sri Ram Bilas Singh and distribute throughout the constituency a large number of yellow caps free of charge and thereby committed the corrupt practice of bribery within the provision of Sec. 123 (1) of the R. P. Act as alleged in Para 3(viii) of the Petition and particulars given in Schedule 8?

(b) Did the Respondent No. 1, his agents and workers with his consent, offer to supply guns and arms to various persons and thereby committed the corrupt practice of bribery u/s 132(1) of the R. P. Act as alleged in para 3(ix) of the Petition and schedule 9 of the list of particulars?

9. (a) Has the result of the Election been materially affected by the aforesaid alleged corrupt practices?

(b) Were any such corrupt practices, committed by the Respondent No. 1 or his election agents or were they committed contrary to the orders and without the consent of the Respondent No. 1 and his Election Agent?

Were such alleged corrupt practices of a trivial and limited character and they did not affect the result of the election?

10. Whether the petitioner did not comply with the provisions of Sec. 117 of the R.P. Act? If so, to what effect?

11. To what relief, if any, is the petitioner entitled?

On the same day an application was made by the Respondent No. 1 (paper 50/c) for issue No. 10 being taken up first in view of the convenience of the parties, to which the Petitioner had no objection. The original receipt of deposit was called from the Election Commission, and the learned counsel for parties, Sri H. C. Varma for petitioner, and Mr. N. C. Chatterji of the Calcutta Bar with Sri J. K. Kapoor, for Respondent No. 1, were heard in detail on this issue on 5th Nov. 1957. I, therefore, proceed to take up issue No. 10 preliminarily.

A consideration of the Government Treasury challan, a certified copy of which is on record (paper 4/AI) is necessary for the disposal of this objection and it may be reproduced here in full.

FORM NO. 43 F.H.B. VOL. V. PART II

(See paragraph 417 and 478)

Challan No. 64

*Challan of cash paid into the State Bank of India at Bareilly.*

*To be filled in by the Remitter*

By whom tendered . . . Kushla Nand Pattak Vakil.

[ (Sd.) K. N. Pattak, 4-5-57.

Signature]

Name (or designation) and address of the person on whose behalf money is paid. Darbari Lal, s/o Pt. Bhoop Ram Sharma M. Mohl Jagatpur Bareilly.

Full particulars of remittance and of authority (if any). Security money for filing petition in respect of 315 Shahjahanpur Parliamentary Constituency.

Amount . . . . . 1,000  
Total 1,000

*To be filled in by the Departmental Officer or Treasury*

Head of Account . . . Central (Civil) Section P Deposits and advances Part II deposits not bearing interest.

(c) Other deposits accounts civil deposits deposits for election petition.

Order to the Bank . . . Date

Correct Receive and grant receipt.

(Signature and full designation of the officer ordering the money to be paid in)

(in words) Rupees One Thousand only

To be used only in the case of remittances to the Bank through departmental Officer or the treasury officer.

Received payment (in words) Rupees One thousand only.

Treasurer

Accountant

Date

Treasury Officer  
Agent

Section 117 of the Representation of People Act of 1951 which contains the relevant provision as to deposit of costs and security for costs reads as follows:—

“The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition.”.

This provision is contained in Chapter V of Part VI and this part contains all the provisions relating to disputes regarding elections including presentation, trial, withdrawal and abatement of Election petitions. The provisions in the new Act for dismissal of an Election Petition, which does not comply with the provisions of Sections 81, 82 or 117 have been made stiffer by the recent amendment. As comparison of Section 90 cl. (4) of the older Act with Section 90 (3) of the amended Act would make this clear.

Under the old provision, while the wordings were

“Notwithstanding any thing contained in Section 85, the Tribunal MAY dismiss an Election Petition which does not comply with the provisions of Section 81, Section 83 or Section 117”.

the legislature in the new Act under Section 90(3) has provided:

“The Tribunal SHALL dismiss an Election Petition which does not comply with the provisions of Section 81, Section 82 or Section 117, notwithstanding that it has not been dismissed by the Election Commission under section 85”.

It is a well settled general rule that an absolute enactment must be obeyed or fulfilled exactly, while a directory enactment only requires to be obeyed or fulfilled substantially. The language of the Section is clear and its meaning is plain and in my view recourse to rules of construction is only necessary when a statute is capable of two interpretations and not in the present case. Since the non-compliance with the provision has been made penal by section 90 clause (3) of the Act, the Provision must be taken to be a mandatory provision.

Learned counsel for the Petitioner has urged that Section 117 is null and void as it contravenes Articles 13 (2) and 14 of the Constitution, and in the alternative that it is not necessary to comply with the letter of that provision, and a deposit of Rs. 1000 having been made by the Petitioner, there was substantial and sufficient compliance with that provision. I proceed to take up these arguments.

Section 14 of the Constitution is given under the head 'Right to Equality' and reads as follows:—

"The state shall not deny to any person equality before the law or equal protection of the laws within the territory of India."  
while Section 13 clause (2) reads as below:—

"13(1) .....

(2) The State shall not make any law which takes away or abridges the rights conferred by this part, and any law made in contravention of this clause shall, to the extent of the contravention, be void."

(3).....

The provision for deposit of costs or of security for costs is to safeguard against vexatious and frivolous litigation and cannot be deemed to deny a person equality before the law. If Section 117 provided for such a security being taken only from certain kind of petitioners, it could come within the mischief of the provision, but Section 117 is quite general and every petitioner who questions the election of his successful opponent is required to make the deposit for security of costs of the successful candidate. Such a provision is based on public policy with its aim to avoid useless litigation and such provisions exist under various Acts *e.g.*, under the Civil Procedure Code, and the rules framed by the various High Courts, an unsuccessful litigant has to deposit security for costs before going up in appeal to the Privy Council or the Supreme Court, or in preferring a second appeal to the High Court. If the contention advanced on behalf of the petitioner is accepted, there could hardly be any provision for the payment of court fees, since a poor claimant may not be possessed of the requisite court fees for instituting his claim before a court of law. Provision for levying court fees may be necessary in all forms of society which allow private property. It has been further held that a statute or provision which makes reasonable classification is permissible under the Constitution. (A.I.R. 1955 S. C. page 1046).

Moreover under the constitution itself the right to challenge an election is not without restriction. Article 329 lays down in clause (b).

"329." Notwithstanding anything in this constitution—

(a) .....

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Thus emphasis is laid on the fact that the petition should be presented "to such authority and in such manner" as provided by law relating to election petitions which may be framed by a competent Legislature. The R. P. Act, 1951 having been duly framed by such a Legislature, must be taken as a guide for the proper presentation and trial of such petition.

The next argument pressed in the alternative by learned counsel for the petitioner may now be taken up. It has not been seriously disputed that the word "shall" under section 117 as also in Section 90 Cl. (3) of the Act makes a proper deposit to be mandatory. It has, however, been urged that there was sufficient compliance by the Petitioner depositing the sum of Rs. 1,000 with the Election Commission. An analysis of Section 117 would suggest the following ingredients:—

*Firstly*, that the petitioner makes a deposit of Rs. 1000,

*Secondly*, that the deposit was made either in the Government Treasury or in the Reserve Bank of India,

*Thirdly*, that the deposit was made in favour of the Secretary to the Election Commission, and

*Lastly*, that the deposit was made as security for the costs of the petition.

A scrutiny of the Treasury Receipt paper (4/AI) would show that it does not comply with the requirements given under headings 3 and 4. In column 3 of the receipt it is not mentioned that the deposit was in favour of the Secretary Election Commission nor is it specified at any place that the deposit was made as security for the costs of the Petition.

An election contest is not an action at law or a suit in equity but is purely a statutory proceeding, unknown to the common law. Such statutory proceedings are special and summary in their nature, and as a general rule strict observance of the statute is required. (Abraham's Election Law, p.263). It would, therefore, not be wrong to say that the Election Tribunal does not possess common law powers in such an action. The Supreme Court in the case of *Jagannath vs. Jaswant and others* (reported in A.I.R. 1954, S.C. at page 210) affirmed this and has observed:

"The general rule is well settled that the statutory requirements of election laws must be strictly observed, and that an election contest is not an action of law or Suit in equity, but is purely a statutory proceeding unknown to the common law and that the court possess no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with, and my petitioner seeking such interference must strictly conform to the requirements of the law."

Even under the old Act, the Election Tribunal Bhopal in the case of *Shiv Narain Vaidya vs. Sardarmal Lalwani*, (reported in E.I.R. Vol. at page 401) held that the provision contained in Section 117 of the R. P. Act of 1951 relating to deposit of security was mandatory and the Election Commission was bound to dismiss the petition if that provision was not complied with and that it had no power to condone the default and receive a proper Treasury receipt after the period of limitation had expired.

In that case the Election Commission had treated the receipt of deposit made by the Petitioner on 17th March 1952 as not being in compliance with the provisions of Section 117 of the Act and by a letter dated 28th May 1952 the Election Commission had pointed out the defect to the Petitioner and had asked for a fresh receipt in favour of the Secretary to the Election Commission within ten days and this was complied with. The Petitioner had raised a contention that the Election Commission having accepted the fresh receipt must be deemed to have condoned the original defect, and the tenability of the petition on that ground could not be questioned. That argument was, however, repelled by the Tribunal which held that despite the action of the Election Commission the Petition was untenable and the Tribunal dismissed it. In the present case the Petition was presented to the Election Commission on 8th May 1957 and no objection was taken by the Election Commission to the deposit made by the petitioner. On 22nd May 1957 the Commission sent an acknowledgement, (Paper No. 76/A1) in the following terms:—

(Paper 76/A1) .....

"I am directed to acknowledge the receipt on the 8th May, 1957 of your petition dated the 7th May, 1957 calling in question the election of Sri Bishan Chand Seth to the House of the People from the

Shahjahanpur constituency of that House, together with a treasury receipt showing a deposit of Rs. 1000 (Rupees one thousand only) towards security for costs of the petition and to state that the petition is receiving the attention of the Election Commission.

Yours faithfully,"

(Sd)./Din Dayal, Under Secy.

It is a mere formal acknowledgement and the last line of that letter cannot be so stretched as to mean that the deposit was accepted by the Election Commission as a proper deposit under Section 117. It may be noticed here that Section 90 Cl. (3) of the Act casts an incumbent duty on the Tribunal to dismiss the petition for non-compliance of the provisions of Section 117, notwithstanding that it was not so dismissed by the Election Commission.

The argument that the word "shall" governs only the immediately following word 'enclosed' and not the other provisions of that section, has not been seriously pressed before me. It was rejected as a ludicrously absurd argument in the Bhopal case, since if it was accepted, even enclosing a piece of waste, paper could be sufficient compliance with the provisions of that section.

Apart from the technicalities of the question, there could be no doubt that serious complications may arise in case of the failure of the petition, at the stage when the successful respondent may apply to realize his costs, the deposit in the present case not being in favour of the Secretary to the Election Commission. The petitioner or his representative can raise a plausible objection that the Secretary to the Election Commission could not pay the successful party out of that deposit as it was not specifically shown in the receipt that the deposit had not been made in favour of the Secretary. The receipt also does not specify that the deposit was made as security for costs of the Petition and is defective in that respect also. It may be that this defect is not of the same degree as the first defect pointed out above and in case where the petition in his petition unequivocally shows that the deposit was made as security for costs, some thing may be said in his favour. The present petitioner, however, has nowhere averred in his petition that this deposit of Rs. 1000 was made by him as security for the costs of the other party.

With regard to the interpretation of the law on the point, I cannot help quoting the words of an eminent American Judge (In *South Pacific Co. vs. Jensen*, 244 *vs.* 205 at page 211), that 'the vindication of the devious is sometimes more important than the elucidation of the obscure.' I am clearly of the view that the petitioner did not comply with the provisions of Section 117 of the R. P. Act, 1951. Under Section 90(3), it is no longer discretionary, but is obligatory on the Tribunal to dismiss the Election Petition. It is unnecessary for me, therefore, to go into the other issues.

I am fortified in my view by the findings of the Allahabad Tribunal, presided over by Sri K. K. Banerji, retired Judge of the Patna High Court (in *Mahendrapal Singh and another vs. Mohan Lal Gautam and other*, and in *Haji Abdul Wahid vs. Dr. B. V. Keskar*, published in the U.P. Gaz. dated 9th November 1957); by that of the Lucknow Tribunal presided over by Sri B. N. Nigam, (now Mr. Justice Nigam of the Allahabad High Court, in *Sri Gurdial Dass vs. Sir Firoz Gandhi and another*, *Gazette of India Extra-ordinary*, dated October 15, 1957); by that of the other Allahabad Tribunal, presided over by Sri G. D. Saigal, (in *Brij Bhushan and another vs. Raja Anand Braham Shah and others* reported in U. P. Gazette, Extra-ordinary, dated October 17th 1957); by that of the Gonda Tribunal in *Balbhadhar Prasad vs. Sri Dharam Pal Singh and others*, published in the U.P. Gazette,



Extraordinary, dated 26th October, 1957) and that of the Kheri Tribunal in Sri Bhudar Lal *vs.* Bansi Dhar Shukla and another, (published in the U.P. Gazette Extra-ordinary dated 9th Sept. 1957).

On the other hand the petitioner has referred me to only two cuttings from newspapers. The first one, a report in a newspaper dated October, 14th 1957, to show that Sri Kamraj Nadar Chief Minister of Madras, an unsuccessful party in an Election Petition had been granted leave to appeal to the Supreme Court. But, from a subsequent news paper reported, (Times of India, dated November 14th 1957) it appears that the point of interpretation of Section 117 of the Act was not the plea on which Mr. Nadir's appeal was accepted. The petitioner has also filed a copy of the judgement of the Farrukhabad Election Tribunal, which overlooked the defects in the deposit receipt. This has been the subject of a writ petition before the High Court and the proceedings before that Tribunal have been stayed. Needless to add that I am not in agreement with the findings of that Tribunal.

### ORDER

The petition is dismissed *in limini*, with costs to the contesting Respondent No. 1, Sri Bishan Chand Seth. He is, however awarded Rs. 100 only as costs. As I am of opinion that the objection on his behalf could have been taken preliminarily even at an earlier stage of the proceedings.

(Sd.) H. P. VARSHNI, H. J. S.

18th November 1957.

Member,

Election Tribunal, Shahjahanpur.

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[No. 82/472/57/7259.]

By order,

A. KRISHNASWAMY AIYANGAR, Secy.

